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EX PARTE MEMORANDUM

July 1, 2005

Marlene H. Dortch, Secretary
Federal Communications Commission
445 – 12th Street, S.W., Room TW-A325
Washington, DC 20554

Re: T-Mobile *et al.* Petition for Declaratory Ruling Regarding
Incumbent LEC Wireless Termination Tariffs, CC Docket No. 01-92

Qwest *Ex Parte* Letter dated June 16, 2005

Dear Ms. Dortch:

On May 31, 2005, the undersigned, on behalf of the American Association of Paging Carriers (AAPC), filed an *ex parte* memorandum reflecting the contents of a meeting on May 27, 2005 with members of the Commission's staff concerning AAPC's Petition for Reconsideration filed in CC Docket No. 01-92 and actions unilaterally taken by Qwest purportedly in response to the Commission's *T-Mobile* decision. Qwest has attempted to justify its actions in its *ex parte* letter dated June 16, 2005; and the purpose of this memorandum is to correct the record in light of Qwest's letter.

Let's be clear from the outset that Qwest is simply using the *T-Mobile* decision as a pretext to continue its what can only be characterized as its campaign of Massive Resistance to Section 51.703(b) of the Commission's rules, 47 C.F.R. §51.703(b), and the Commission's subsequent *TSR Wireless* decision.¹ Qwest professes that it faces a "conundrum" because it allegedly "has no authority *under state law* to give tariffed services away at a price other than the tariffed rate" while, at the same time, "Qwest was also bound by the terms of the Commission's *TSR Order* not to charge paging for certain services even though they appeared in a state tariff". (Emphasis partially added).

¹ *TSR Wireless LLC v. US West Communications, Inc.*, 15 FCC Rcd 1116 (FCC 2000), *aff'd sub nom. Qwest Corporation v. FCC*, 252 F.3d 462 (DC Cir. 2001).

Of course, there is in fact no conundrum at all, because federal law always trumps inconsistent state law. What Qwest really is conceding, therefore, is that it has willfully failed and refused – over the course of the several years since §51.703(b) was first adopted, and since *TSR Wireless* was decided – to amend its state tariffs to conform to federal law. Whatever Qwest’s obstinacy may otherwise portend about its good faith in this matter, it plainly does *not* create a conundrum as Qwest claims. Rather, since Qwest has refused to amend its state tariffs to conform to federal law, the state tariffs are simply unenforceable to the extent of such inconsistency. Qwest’s attempt to predicate its current conduct on some alleged “conundrum” is, therefore, plainly wrong and no more than naked bootstrapping.

Qwest’s letter is useful, however, principally for tacitly underscoring the essential points made by AAPC in its May 27th meeting. As Qwest acknowledges, one of the principal points made by AAPC in its meeting was that Qwest’s unilateral action against paging carriers “‘is a good illustration of the unintended interpretation and consequences of [the *T-Mobile*] decision.’” (Alteration in original).

Although Qwest attempts to deflect this as a “misunderstand[ing of] what Qwest is doing,” it goes on to specifically acknowledge that the “*T-Mobile Decision* gave Qwest *additional impetus* to correct” what it views as an “obviously unacceptable situation” arising out of the *TSR Wireless* decision. (Emphasis partially added).² Moreover, Qwest explicitly acknowledges that, unlike paging interconnection, the “*T-Mobile Decision* arose in the context of *indirect interconnection, where the appropriate charges for transport and termination were the only issues to be resolved.*” (Emphasis partially added). If Qwest’s own statements are not admissions that the *T-Mobile* decision is simply a pretext for Qwest’s attempt to deal with a pre-existing, unrelated “problem,” and thus that its conduct is an *unintended consequence* of the *T-Mobile* decision, then it is impossible to understand what its statements mean.

A second principal point made by AAPC in its meeting is that “permitting ILECs to request interconnection and impose compulsory arbitration on paging carriers gives ILECs unwarranted bargaining leverage” in pre-existing billing disputes spawned by §51.703(b) of the rules, because “the cost of arbitration easily can equal or exceed the value to the paging carrier of the billing dispute, and thus unfairly works to the ILECs advantage in negotiating a resolution of the dispute.”

Qwest chooses in its *Ex Parte* letter to remain silent on this point, but has not done so in its communications with the paging carriers.³ In those communications it has explicitly threatened to “file for arbitration with the applicable state commission” in the event “negotiations [are] not . . . concluded within the timeframe set forth in the Telecommunications Act of 1996. Simply

² In so characterizing its conduct, Qwest again betrays its obdurate refusal to acknowledge §51.703(b) with respect to paging carriers. Contrary to Qwest’s letter, what is “obviously unacceptable” is Qwest’s willful and extended refusal to comply.

³ A specimen copy of Qwest’s letter to paging carriers dated May 4, 2005, is attached hereto for the Commission’s convenient reference.

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stated, Qwest is making abundantly clear in these communications, precisely as stated by AAPC in its May 27th meeting, that Qwest is using the potential cost of compulsory arbitration as leverage to try to force paging carriers to capitulate on their unrelated billing disputes with Qwest arising out of Qwest's pre-existing refusal to acknowledge or comply with §51.703(b) of the rules and the Commission's *TSR Wireless* decision.

Respectfully submitted,

s/Kenneth E. Hardman
Kenneth E. Hardman

*Attorney for American Association of
Paging Carriers*

Enclosure

cc: Ms. Tamara Preiss
Ms. Victoria Goldberg
Mr. Steve Morris
Mr. Jay Atkinson
Mr. Peter Trachtenberg
Ms. Nese Guendelsberger
Mr. Paul Murray

May 4, 2005

[REDACTED]

To: [REDACTED]

Announcement Date:	May 4, 2005
Effective Date:	Immediately
Document Number:	CONT.05.04.05.B.000805.Wire_Page_Intc_Chng
Notification Category:	Contract Notification
Target Audience:	Select Wireless and Paging Customers
Subject/Product Name:	Wireless and Paging Interconnection – Type 1 and Type 2

Qwest is announcing changes to our service offerings for Wireless and Paging Type 1 and Type 2 Interconnection Customers to align with a recent Federal Communications Commission (FCC) ordered ruling. In its recent order *In the Matter of Developing a Unified Intercarrier Compensation Regime* (the T-Mobile matter), FCC 05-42, released February 24, 2005, the FCC clarified a preference for contractual arrangements for wireless termination arrangements by (i) prohibiting LECs from imposing compensation obligations for non-access CMRS traffic pursuant to tariff, (ii) amending its rules to clarify that a LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act, and (iii) identifying state commission implemented or approved rates as the applicable interim rates once a LEC initiates the negotiation process. Effective April 29, 2005, the FCC provides no further guidance on implementation of these changes during this transition period.

In order to comply with the FCC's T-Mobile order, Qwest will commence action to withdraw any state tariffs for Wireless (including Paging) Type 1 and Type 2 Interconnection. However, Qwest will simultaneously offer continuing and comparable service via the attached Wireless or Paging Interconnection Agreement(s), as applicable, for both service categories. The proposed Agreement(s) align pricing with the state commission implemented or approved rate elements consistent with 47 C.F.R. 51.715. The proposed rates are set forth in the Agreement(s) attached to this notification.

In order to make this transition as seamless as possible for CMRS providers, Qwest will, on an interim basis, immediately convert [REDACTED] current tariffed service to the interconnection arrangements set forth in the attached Agreement(s), with billing adjustments and credits effective as of April 29, 2005, the effective date of the T-Mobile order. Unless [REDACTED] contacts Qwest within thirty (30) days after the date of this letter requesting changes to the attached Agreement(s), Qwest will consider these interim arrangements accepted by [REDACTED] for all existing and future traffic exchanged with Qwest and will file this notice and the attached Agreement(s) with the appropriate state commissions as the terms and conditions of the interim interconnection arrangement(s) between Qwest and [REDACTED]. If [REDACTED] is not satisfied with the interim interconnection arrangements [REDACTED] and provides written notice within thirty (30) days after the date of this letter, Qwest will engage in negotiations with [REDACTED] to complete interim interconnection arrangements with [REDACTED]. For all purposes, this letter shall be deemed a formal request for negotiations between Qwest and [REDACTED] pursuant to 47 C.F.R. 20.11, as revised by the FCC in the T-Mobile decision. The terms of the attached Agreement(s) are the terms and conditions of Qwest's template interconnection agreement which will be used for such negotiations between Qwest and [REDACTED]. Consistent with C.F.R. 20.11, the interim rates

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<http://www.qwest.com/wholesale/notices/cnla/maillist.html>

identified in this letter and attachments shall apply during the pendency of the interconnection negotiations. Should negotiations not be concluded within the timeframe set forth in the Telecommunications Act of 1996, Qwest may file for arbitration with the applicable state commission between the 135th and 160th day after the date of this letter.

If you have any questions or would like to discuss this notice please contact your Qwest Service Manager, on . Qwest appreciates your business and we look forward to our continued relationship under an appropriate interconnection agreement with [REDACTED]

Sincerely,
Larry Christensen, Director
Interconnection Agreements
Qwest Communications

Sincerely,

Qwest

cc: Judy Rixe